

[\*Moon v. Philadelphia Electric Co.\*](#), 90-ERA-48 (ALJ Sept. 18, 1990)

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**U.S. Department of Labor**  
Office of Administrative Law Judges  
2600 Mt. Ephraim Avenue  
Camden, New Jersey 08104  
(609) 757-5312  
FTS 488-5312

CASE NO. 90-ERA-49

Joseph W. Moon,  
Complainant

v.

Philadelphia Electric Company;  
R. W. Dubiel; G. W. Murphy;  
and M. A. Christinziano,  
Respondents

RECOMMENDED  
DECISION  
FOR APPROVAL OF SETTLEMENT AGREEMENT  
AND  
DISMISSAL OF ACTION

This proceeding arises under the employee protection provision of the Energy Reorganization Act of 1974, 42 U.S.C § 5851 (1982), and implementing regulations at 29 C.F.R. Part 24 (1986).

The parties hereto have submitted a fully executed Stipulation of Dismissal and Separation Agreement and Release, both of which documents are annexed hereto and incorporated herewith.

Upon review of such documents, I find that the terms thereof are

fair, adequate and reasonable, and that dismissal of this action is not against the public interest.

Accordingly, pursuant to 29 C.F.R. § 24.6, I recommend that:

1. The instant settlement agreement be approved, and
2. This action be dismissed with prejudice.

RALPH A. ROMANO

Administrative Law Judge

DATED: SEP 19 1990

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OFFICE OF ADMINISTRATIVE LAW JUDGES  
UNITED STATES DEPARTMENT OF LABOR

NO. 90-ERA-48

In the Matter of

JOSEPH W. MOON,  
Complainant,

vs.

PHILADELPHIA ELECTRIC COMPANY;  
R. W. DUBIEL; G. W. MURPHY;  
and M. A. CHRISTINZIANO,  
Respondents.

STIPULATION OF DISMISSAL

The Philadelphia Electric Company, Gary W. Murphy, Richard W. Dubiel, Martha A. Christinziano and Joseph W. Moon, having entered into an Agreement settling the above-captioned action, it is hereby Stipulated and Agreed pursuant to 29 C.F.R. Section 18.9 that all claims of Joseph W. Moon against the Philadelphia Electric Company, Gary W. Murphy, Martha A. Christinziano, Richard W. Dubiel are dismissed with prejudice, and any liability of Philadelphia Electric Company, Gary W. Murphy, Richard W. Dubiel, and Martha A. Christinziano in connection with the matters described in Docket Number 90-ERA-48 is extinguished.

Each party shall bear its own costs.

By: JOSEPH W. MOON

By: MARK L. CZYZ, ESQ.  
Attorney for Joseph W. Moon  
One Gateway Center  
Newark, New Jersey 07102

By: J. LINDSAY JOHNSTON  
Assistant General  
Counsel  
Philadelphia Electric Co.  
2301 Market Street, S23-1  
Philadelphia, PA 19101

Attorney for Philadelphia  
Electric Company,  
Martha A. Christinziano,  
Richard W. Daniel and  
Gary W. Murphy

#### SEPARATION AGREEMENT AND RELEASE

This Agreement is made by and between JOSEPH W. MOON ("Employee") and the Philadelphia Electric Company ("Company"), on its own behalf and on behalf of Gary W. Murphy, Richard W. Dubiel and Martha A. Christinziano.

In consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. Employee agrees to resign irrevocably from his employment with the Company effective September 1, 1990. Employee agrees that at no time shall Employee seek or accept employment or serve or seek to serve as a consultant or independent contractor with (a) Company or (b) any subsidiary or affiliate of the Company, which is defined by the parties to mean any business entity in which the ownership interest of the Company is equal to or greater than 50 per cent with the exception of Peach Bottom Generating Station and PJM, with whom Employee also agrees not to seek or accept employment. Nothing herein shall preclude Employee from obtaining employment with or from rendering services as either a consultant or contractor, to any other private business entity provided, however, that to the extent the services of any such private business entity are retained by Company, Employee agrees not to work on behalf of such private business entity for the Company on any Company work site.
2. Company agrees not to discriminate in its business dealings against any business entity with whom Employee becomes associated either as an employee or as a consultant or independent contractor, and Company shall at all times deal fairly with any such business entity in its decision-making processes with respect

to awarding contracts for work to be done for or on behalf of the Company. In addition, Company further agrees not to discriminate against any person presently employed by or who may seek employment with the Company by virtue of such person's relationship to Employee, including but not limited to, any person's participation or assistance to Employee in the matter of Joseph W. Moon v. Philadelphia Electric Company, et al., Docket No. 90-ERA-48. Employee further agrees that Employee's spouse shall not seek employment with Company prior to September 1, 1991.

3. Employee agrees to return to the Company on or before the effective date of his resignation, September 1, 1990, all property belonging to Company, including but not limited to Company credit cards, passes and work material such as. computers or calculators, and any other information belonging to Company.

4. Employee agrees to keep in confidence and not disclose technical and business information acquired by Employee during his employment with the Company and covered by the attached "Certificate of Departing Employee" which Employee agrees to sign concurrently with this Agreement.

5. Employee and Company agree not to disclose or discuss, other than with legal counsel, personal tax or financial advisors or employee's spouse (if any) and in the case of the Company any employee, officer or director who needs to know in order to process this Agreement, either the existence of or any details of this Separation Agreement and Release. Employee will ensure that any such legal counsel, personal tax or financial advisor or spouse will not disclose or discuss the existence or any details of this Separation Agreement and Release with any other person. Employee agrees that, in so far as Employee discusses the circumstances of Employee's termination of employment with anyone other than such legal counsel, personal tax, financial advisor or spouse, Employee will state only that Employee voluntarily resigned. Company agrees that, if Company is contacted by any prospective employer, its response will confirm dates of employment and titles, and following Employee's resignation, Company will also confirm that Employee voluntarily resigned in order to pursue other interests.

6. Employee hereby waives any and all claims which Employee might have against Company for wages, salary payments, vacation pay or other benefits of any kind with the following exceptions:

- a. Such vested benefits as employee may have under any pension plan by the Company which is subject to the Employee Retirement and Income Security Act (ERISA);
- b. Rights to obtain continued health plan coverage under the Consolidated Budget Reconciliation Act (COBRA);
- c. Such rights, property and benefits Employee may have in and to any 401 (k) plan and Employee savings plan with the Company;
- d. Payment for unused vacation days; and
- e. Payment for severance and damages as a result of the mutual agreement reached between Employee and Company terminating the employment relationship between the parties and Company agrees to make the said payment to Employee within seven (7) days of the dismissal of Joseph W. Moon v. Philadelphia Electric Company, et al., Docket No. 90- ERA-48.

7. Except as provided in the immediately preceding paragraph, Employee and Company, on its behalf and on behalf of Gary W. Murphy, Richard W. Dubiel and Martha A. Christinziano, as their respective free and voluntary acts, hereby release and discharge each other, and their associates, affiliates, predecessors, successors, subsidiaries and parents, and their successors and assigns, and the directors, officers, employees and agents of each of them, of and from any and all debts, obligations, claims, demands, judgments or causes of action of any kind whatsoever, known or unknown, in tort, contract, by statute or any other basis for equitable relief, compensatory, punitive or other damages, expenses (including attorney's fees), reimbursements or cost of any kind, including but not limited to, any and all claims, demands, rights and/or causes of action, including those which might arise out of allegations relating to a claimed breach of an alleged oral or written employment contract, or relating to purported employment discrimination or civil rights violations such as, but not limited to, those arising under the Atomic Energy Act or any other applicable federal, state or local employment discrimination statute or ordinance which the parties hereto might have or assert against each other or against any of the said entities or persons (4) by reason of the employment relationship between Employee and Company or the termination of said employment relationship and all circumstances related thereto; or (b) by reason of any other matter, cause or thing whatsoever which may have occurred prior to the date of the execution of this Agreement.

8. All claims against the Company, Gary W. Murphy, Martha A. Christinziano and Richard W. Dubiel in the administrative proceeding pending before the Office of the Administrative Law Judges, United States Department of Labor, captioned Joseph W. Moon v. Philadelphia Electric Company, Gary W. Murphy, Martha A. Christinziano and Richard W. Dubiel, Docket No. 90-ERA-48 will be dismissed with prejudice. A Stipulation effecting such dismissal between the parties is appended hereto and said Stipulation will be executed and submitted to the Administrative Law Judge concurrently with the execution of this Agreement.

9. Employee promises not to initiate a lawsuit or to bring a claim against Company, its associates, affiliates, predecessors, successors, subsidiaries or parents or their successors or assigns, or the directors, officers, employees or agents of any of them, or Gary W. Murphy, Richard W. Dubiel or Martha A. Christinziano in any court, government agency or otherwise, relating to Employee's employment, termination of employment or related events, including but not limited to any claim under federal, state or local statute, ordinance or rule of law, excepting, however, a lawsuit based on an alleged breach of the terms and provisions of this Separation Agreement and Release. Employee waives any remedy or recovery in any action which may be brought on Employee's behalf by any government agency or other person except for any work-related exposure to radiation during his employment relationship with Company.

10. Employee understands that nothing contained herein shall prohibit, restrict or otherwise discourage him from providing the U.S. Nuclear Regulatory Commission ("Commission") information about possible violations of requirements imposed by the Atomic Energy Act or the Energy Reorganization

Act, requesting the Commission to institute action for the administration or enforcement of these requirements or testifying in any Commission proceedings.

11. Nothing in this Separation Agreement and Release shall be deemed or construed as an admission of liability or any wrongdoing by or on behalf of Company, Gary W. Murphy, Richard W. Dubiel and Martha A. Christinziano or by or on behalf of Employee.

12. This Separation Agreement and Release constitutes the entire Agreement between Employee and Company on its behalf and on behalf of its employees, Gary W. Murphy, Richard W. Dubiel and Martha A. Christinziano, with respect to the subject matter hereof and shall not be amended, modified or amplified without specific written provision to that effect, signed by Company and Employee. No oral statement of any person whatsoever shall in any manner or degree, modify or otherwise affect the terms and provisions of this Separation Agreement and Release.

I HAVE CAREFULLY READ AND FULLY UNDERSTAND THE PROVISIONS OF THIS SEPARATION AGREEMENT AND RELEASE, INCLUDING THE RELEASE OF CLAIMS AND COVENANT NOT TO SUE, AND HAVE HAD SUFFICIENT TIME AND OPPORTUNITY TO CONSULT WITH MY PERSONAL LEGAL, TAX AND FINANCIAL ADVISORS PRIOR TO EXECUTING THIS AGREEMENT.

WITNESS DATE EMPLOYEE DATE

WITNESS DATE COMPANY DATE

THIS IS A RELEASE READ CAREFULLY BEFORE SIGNING

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SEPARATION AGREEMENT AND RELEASE  
CERTIFICATE OF DEPARTING EMPLOYEE

I, Joseph W. Moon, acknowledge that I have been reminded of my continuing obligations to the Philadelphia Electric Company (the "Company") to safeguard the confidentiality of all Company proprietary information, which I understand includes but is not limited to confidential information concerning any inventions, discoveries, improvements, processes, formulas, apparatus, computer programs, equipment, methods, trade secrets, research data, rate and cost data, circuit layouts, daily addenda, personal data, identities of users and purchasers of the Company's services, customer billing or other confidential matters possessed, owned or used by the Company or its affiliates including confidential information of a third party which the party is bound to protect.

I further acknowledge that I have returned or provided to the Company all confidential materials such as records, files, memoranda, reports, price lists, customer lists, drawings, plans, sketches, documents, equipment, and the like relating to the business of the Company, containing proprietary information which were in the Company's files, or which were prepared by me during the time of my employment by the Company, and that I have not retained any copies or reproductions of such materials or any part thereof.

DATE:

DATE:

SUPERVISOR'S

SIGNATURE

SIGNATURE:

PRINT NAME:

PRINT NAME:

TITLE: